No. 99-1529

SEP 18 2000

In The

SUPREME COURT OF THE UNITED STATES

DONNA RAE EGELHOFF,
Petitioner,
v.
SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BRENINER, AND DAVID EGELHOFF,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF THE STATES OF WASHINGTON, ARKANSAS, COLORADO, MASSACHUSETTS, MONTANA, OKLAHOMA, UTAH, VERMONT, AND WEST VIRGINIA, AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICI CURIAE

The State of Washington, together with the other amicus curiae, respectfully submit this brief in support of Respondents. The amici states have two vital interests to present to the Court.

First, amici states have a strong interest that the Court apply traditional principles of pre-emption to the Employee Retirement Income Security Act (ERISA). Under traditional principles, ERISA pre-emption reflects the narrow scope of federal interests necessary to the purposes of ERISA, without unnecessarily pre-empting state laws that might superficially relate to an ERISA plan. In other areas of federal regulation, the Court continually emphasizes the presumptions that favor state law, except where there is a clear showing that Congress intended to preclude states from a particular field. This Court's initial decisions interpreting ERISA, however, strayed from these principles and announced an analysis that examined whether state law "relates to" a ERISA benefit plan. This approach effectively eliminated the normal presumption in favor of state law. Recent ERISA decisions, in contrast, have properly relied upon the normal presumptions against pre-emption by redirecting the pre-emption analysis to the provisions of ERISA. The amici states have a strong interest in this narrower approach to ERISA pre-emption, which is consistent with federalism values that presume the states will define the property rights arising out of marriage, divorce, and the transfer of property upon death.

Second, amici states are concerned with preserving application of the state laws that determine validity of a beneficiary designation, and the effect of marriage, divorce, and other actions on that designation. The amici states submit this brief to describe to the Court how state laws regarding beneficiaries protect the interests of state citizens during marriage, divorce, and after death. The interest of the states in this area is particularly high, because pension and welfare

benefits are often the largest financial asset earned during a marriage or a lifetime of employment. State laws that address beneficiary designation ensure fairness and mutuality during marriage, divorce, and when property is transferred after death. Washington's statute, for example, reflects the common understanding and the legal reality that divorce distributes all of the property held by two ex-spouses. This serves a presumed intention to cease designating an ex-spouse as a beneficiary after divorce has fully addressed the rights of the ex-spouse and eliminated his or her rights in a pension or as an insurance beneficiary. Other states have analogous laws that determine the validity of a beneficiary designation in a variety of related circumstances.

ERISA does not regulate the domestic matters addressed by these various state laws. The amici states, therefore, are vitally concerned that ERISA's regulation of pension and welfare plans not be interpreted as congressional intent to pre-empt state laws that address validity of beneficiary designations, which are vital to ensuring fair legal relationships during marriage, divorce, and in other circumstances. States are interested in allowing their citizens to continue relying on state marriage and probate laws to define their legal rights and expectations, without having inconsistent results for a beneficiary designation in a benefit plan regulated under ERISA.

Amici states therefore ask the Court to affirm that ERISA did not pre-empt application of Washington law to determine that the beneficiary of the pension plan and insurance plan had been revoked as a matter of law after divorce.

SUMMARY OF ARGUMENT

In recent decisions, the Court has shifted away from determining pre-emption of any state law that "relates to" an ERISA benefit plan. Instead, the Court has discerned Congress'

intent to pre-empt state laws by looking to the provisions and purposes of ERISA. With these recent cases, the Court has provided a meaningful application of the strong presumptions against pre-emption of state powers over subjects like domestic relations, property ownership, and the transfer of property upon death. State powers should not be pre-empted where no particular provision of ERISA speaks to the subject, because Congress presumably did not intend to displace those traditional state powers.

This Court should now clarify that ERISA involves traditional field pre-emption principles, where the field that is pre-empted is defined by the procedural and substantive provisions of ERISA. With this field pre-emption approach to ERISA, the Court preserves the federalism relationship between the states and the federal government, ensuring that state laws continue to govern local civil matters, except where Congress pre-empts states from a field.

When these recent pre-emption decisions are applied to a state law that determines whether an ex-spouse is a surviving beneficiary to an insurance policy or pension benefit, the Court should start by recognizing that this type of state law serves the state's interest in defining marital property and in ensuring a fair and complete distribution of property during divorce. Marriage, divorce, and probate laws are historically the province of the states. State laws that address beneficiaries reflect other state laws that require an employee to name a spouse as a beneficiary, which protects community property rights. Invalidating an ex-spouse as beneficiary merely reflects the expectations of the former spouse, that the divorce eliminates the marital property relationship that caused the designation in the first place.

Moreover, the Court should recognize that state law already affects the validity of beneficiaries named in ERISA plans. Plans must deal with issues such as whether there is a valid marriage, who is a lawful child, or who has survived in

circumstances involving simultaneous death of an employee and beneficiary. If state law were not applicable, then other state objectives would be frustrated, such as the application of the common state slayer laws that prevent a murderer from being the beneficiary of a victim's pension or life insurance.

State laws provide the details that fulfill the expectations of people in their domestic relationships. ERISA, in contrast, does not speak to these domestic and local issues. Its provisions do not show congressional intent to pre-empt state laws in this field. Rather, the preservation of state law in this case is consistent with Congress' overarching purpose of protecting employees who rely on these laws to order their affairs and ERISA plan benefits for distribution of their property after death.

In addition, the Court should consider the broad preservation of state authority as it applies to insurance. Under ERISA's savings clause for state insurance laws, it creates no field of pre-emption that precludes application of state laws in the context of determining lawful beneficiaries to an insurance policy.

ARGUMENT

I. CONGRESSIONAL INTENT TO PRE-EMPT STATE LAW SHOULD BE LIMITED TO FIELD PRE-EMPTION DEFINED BY THE PROVISIONS AND OBJECTIVES OF ERISA

Every state has laws that defines ownership of property, marital relations, and matters of inheritance. These state laws ensure the fairness and mutuality of marriage by defining the rules of marital property, divorce, and inheritance. The citizens of the states rely on those rules, living their lives and developing significant expectations based upon them. It would most likely exceed the constitutional limits on federal power if Congress tried to do what the states have accomplished in protecting the

expectations and understandings of citizens with regard to marriage, divorce, and death.[1]

ERISA, however, regulates pension plans, life insurance, and other benefits that arise within the backdrop of state laws governing marriage, divorce, and inheritance. ERISA pre-emption should recognize that these traditional areas of state laws existed before ERISA. By starting with the presumption that these state laws are to be preserved, pre-emption is limited to fields defined by the provisions and purposes of ERISA. This approach to pre-emption accomplishes the intentions of Congress as expressed in the provisions of ERISA, while assuring employees that ERISA benefit plans will not frustrate normal expectations rooted in the state laws governing marriage, divorce, and inheritance.

A. Recent Decisions Properly Implement The Strong Presumption Against Pre-emption Of State Law By Focusing On The Provisions And Purposes Of ERISA

1. "In all pre-emption cases, and particularly in those in which Congress has 'legislated in a field which the States have traditionally occupied,' we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that is the clear and manifest purpose of

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[1] In *United States v. Morrison*, 120 S. Ct. 1740 (2000), this Court ruled that the Commerce Clause did not provide Congress with authority to adopt a provision of the Violence Against Women Act. According to the Court: "The Constitution requires a distinction between what is truly national and what is truly local." *Morrison*, 120 S. Ct. at 1754. The Court rejected the argument that commerce was implicated owing to the impact of violence against women on the national economy. The Court rejected this reasoning because it could also justify federal regulation of "family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and childrearing on the national economy is undoubtedly significant". *Id.* at 1753.

Congress.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). As explained further in the next sections, the text of 29 U.S.C. § 1144(a) (ERISA § 514(a)) reflects congressional intent that pre-emption arise from the "provisions" of ERISA. This approach is like this Court's traditional approach to field pre-emption, and ensures that the scope of pre-emption does not undermine or eliminate the presumption against pre-emption of traditional state power.

2. The first two decades of ERISA pre-emption decisions do not provide a meaningful application of the normal presumptions that ERISA does not pre-empt state law. The Court's initial ERISA decisions fail because they try to find congressional intent in the statement of § 514(a), that the "provisions" of ERISA "shall supercede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan". 29 U.S.C. § 1144(a) (emphasis added); *see Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Because ERISA benefits arise at the intersection of a number of traditional areas of state law, it is not surprising that a number of state laws seem to "relate to" ERISA benefit plans. These original pre-emption rulings placed a cloud over state authority, enabling arguments that anything provided as an ERISA plan was immune from state regulation.

3. In recent rulings, the Court has properly rejected the literal application of the broad words of § 514(a), holding that congressional intent cannot be reliably discerned from the words "relate to":

> "If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for 'really, universally, relations stop nowhere.' But that, of course, would be . . . to read the presumption against pre-emption out of the law whenever Congress speaks to the matter with generality." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (citation omitted).

Instead, the intent of Congress is best determined by evaluating the "objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive". *Id.* at 656. The New York surcharge in that case had "an indirect economic influence" on ERISA plans, but did "not bind plan administrators to any particular choice and thus function as a regulation of an ERISA plan itself". *Id.* at 659.

Travelers Insurance thus adopted a better approach to determining congressional intent by focusing ERISA pre-emption on whether state law was "regulating the plan itself" or interfering with the "objectives" of the ERISA statute. This properly implements the text of § 514(a), providing that pre-emption arises from "the provisions of this chapter and subchapter III of this chapter". 29 U.S.C. § 1144(a). This is no different than the Court's traditional approach to field pre-emption, where congressional intent to pre-empt is discerned from the nature and scope of the federal law. The express language of § 514(a) is congressional confirmation that the fields defined by provisions of ERISA shall pre-empt state laws that might purport to supplement or duplicate these provisions.

The approach in Travelers was continued in *DeBuono v. NYSAA-ILA Medical & Clinical Services Fund*, 520 U.S. 806, 813 (1997). The *DeBuono* opinion explains that one must go beyond the "unhelpful text" of § 514(a), with its expansive reference to state laws that "relate to" an ERISA plan. To overcome the "normal presumption against pre-emption," the Court again turns to the provisions of the ERISA statute to indicate "the scope of state law that Congress understood would survive". *Id.* at 813-14. Accordingly, the regulation and taxation of health care facilities is a "field that has been traditionally occupied by the States." *Id.* at 814. The Court

required the opponents of that state law to show that Congress intended that ERISA would pre-empt that type of state law.

California Division of Labor Standards Enforcement v. Dillingham Construction, Inc., 519 U.S. 316 (1997), also illustrates again why the various methods for analyzing the words "relates to a plan" in § 514(a) do not reflect congressional intent to pre-empt state law. *Dillingham Construction* involved a California law requiring contractors on public works to pay prevailing wages. California applied its law to an apprenticeship program that was itself an ERISA benefit. *Dillingham Construction* recognized that nothing in ERISA overcame the presumptions that protected this area of traditional state regulation.

> "[The] substantive standards to be applied to apprenticeship training programs are, however, quite remote from the areas with which ERISA is expressly concerned – reporting, disclosure, fiduciary responsibility, and the like. . . . A reading of § 514(a) resulting in the pre-emption of traditional state-regulated substantive law in those areas where ERISA has nothing to say would be unsettling." *Dillingham Constr.*, 519 U.S. at 330 (citation omitted) (internal punctuation omitted).

This ruling in *Dillingham Construction* finds pre-emption by examining the provisions and objectives of ERISA itself, asking whether ERISA has anything to say about the subject.

4. No matter how this case is decided, the Court should confirm that the scope of ERISA pre-emption is not "expansive" and not to be derived from the breadth of the words "relate to". The focus on "relates to" is an illusory test "since, as many a curbstone philosopher has observed, everything is related to everything else". *Dillingham Constr.*, 519 U.S. at 335 (Scalia, J., concurring).

Instead of focusing on the words "relates to", the Court should adopt the approach suggested by Justices Scalia and Ginsburg in *Dillingham Construction*. Under this approach, the phrase "relates to" "is meant, not to set forth a test for pre-emption, but rather to identify the field in which ordinary field pre-emption applies–namely, the field of laws regulating 'employee benefit plans described in section 1003(a) of this title and not exempt under section 1003(b) of this title,' 29 U.S.C. § 1144(a)". *Dillingham Constr.*, 519 U.S. at 336. The Court should "apply ordinary field pre-emption, and, of course, ordinary conflict pre-emption" to ERISA. *Id.*

Under this pre-emption approach, the states retain full authority to legislate over matters of property ownership, inheritance, and marriage so long as state law does not enter a filed where federal regulation is exclusive or conflict with implementation of ERISA. *See Boggs v. Boggs*, 520 U.S. 833 (1997) (applying conflict pre-emption to void a testamentary transfer). This approach to pre-emption preserves the traditional state laws that form the context in which individual employees understand their pensions, life insurance policies, and other benefits regulated by ERISA.

B. ERISA Pre-emption Should Preserve The Balance Of Federalism

1. Applying traditional field and conflict pre-emption analysis to ERISA is consistent with important principles of federalism. The Court's federalism jurisprudence "requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden v. Maine*, 527 U.S. 2240, 2263 (1999). This Court has been vigilant in enforcing the structural limits in the Tenth and Eleventh Amendments on the power of Congress to commandeer state government or waive

state sovereign immunity.[2] The principles of federalism behind these decisions apply equally in an ERISA pre-emption case. This is because a pre-emption case "is a case about federalism, that is, about respect for the constitutional role of the States as sovereign entitles". *Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1928 (2000) (Stevens J., dissenting) (citation omitted) (internal punctuation omitted).

2. A significant value of our Constitutional federalism is that it allows for local variation in the law to reflect local differences in the values and expectations of the citizens of each state. Civil laws concerning marriage, divorce, and inheritance emerge from the fabric of society where state laws predominate. This Court has long upheld the presumptive power of the states in these areas, subject only to Constitutional restrictions.[3]

Preservation of state authority enables different approaches to the solution of the societal problems.

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[2] *See New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank*, 527 U.S. 627 (1999); *Kimel v. Florida Bd. of Regents*, 120 S. Ct. 631 (2000).

[3] *Mager v. Grima*, 8 How. 490, 493 (1850) (every state has power to regulate the manner and term upon which property within its dominion may be transmitted by will or inheritance); *Labine v. Vincent*, 401 U.S. 532, 537 (1971) (states make laws concerning intestate succession); *Boddie v. Connecticut*, 401 U.S. 371, 385 (1971) (Douglas, J., concurring) (power of state over marriage and divorce is complete, except as limited by constitutional provisions); *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 7 (1967) (marriage is a "social relation subject to the State's police power").

Congress, of course, had no intention to federalize marriage, divorce, or inheritance as a byproduct of ERISA regulations of pension plans or insurance plans.

3. When pre-emption is consistent with federalism, it ensures that state laws implement commonly held expectations about property, marriage, divorce, and death. For example, a person with one private life insurance policy and a second life insurance plan provided by an employer would expect state law to apply to both policies. If ERISA pre-empts, it frustrates his expectation that both policies will reflect his marital status or his divorce in the same way.

II. ERISA DOES NOT EVIDENCE CONGRESSIONAL INTENT TO ELIMINATE STATE POWER TO DETERMINE VALIDITY OF BENEFICIARIES TAKING PROPERTY AFTER DEATH

To show that ERISA § 514(a) pre-empts application of Wash. Rev. Code § 11.07.010, petitioners must overcome a strong presumption that Congress intended to preserve state law. Pre-emption requires a showing by petitioners that the provisions of ERISA were intended to create a field of ERISA regulation that pre-empts states from determining the validity of beneficiaries after divorce. Amici states show in the following sections that the state laws before the Court reflect local interests and understandings regarding marital property, and that ERISA does not address these matters.

1. Washington law recognizes that a spouse is typically the designated beneficiary to pension and life insurance benefits simply because of the status as a spouse. The Washington statute that revokes beneficiary designation after divorce serves as an understanding regarding the effect of divorce. A person who divorces in Washington expects, under state law, that there will be a complete distribution of all property and debts including, community property, separate property, as well as other factors. *See* Wash. Rev. Code § 26.09.080, App. at 1a. All properties, including future interests, are accounted for and virtually all properties are divided or assigned to one of the spouses during the dissolution of marriage. *See* Kenneth Weber, 19 *Washington Practice – Family And Community Property Law* § 32.4. Retirement benefits are an asset earned during the marriage and divisible upon divorce. *E.g., In re Marriage of Chavez*, 80 Wash. App. 432, 909 P.2d 314 (1996).

When a Washington citizen undergoes a dissolution of marriage and division of property, he or she reasonably believes that the divorce proceeding extinguishes the rights of the former spouse. Wash. Rev. Code § 11.07.010 implements this expectation. It ensures complete division of marital property by applying a rule of law to all non-probate properties where a former spouse might have been named as a beneficiary. This rule enables divorced spouses to start new lives or to remarry with such beneficiary designations deemed revoked. Put simply, the ex-spouse has ceased to survive as a spouse and, as a matter of law, is not a surviving beneficiary. Numerous other states have laws that implement similar expectations regarding property.[4]

[4] Examples of analogous state laws include: Tex. Fam. Code Ann. § 3.632 (West 1997) (requiring redesignation of ex-spouse after divorce); Okla. Stat. tit. 15, § 178 (1981) (ex-spouse deemed to predecease unless redesignated); Mich. Comp. Laws § 552.191(2) (requiring divorce decrees to determine or extinguish rights of spouses in each of their life insurance, endowments, or annuities).

2. As noted above, ERISA regulates benefits that exist in a context of detailed state laws governing property, marriage, divorce, and inheritance. The following three examples illustrate analogous state laws that may affect beneficiary designations in ERISA plans.

First, the pension plan in this case recognizes that federal law requires consent of a spouse for designation of a non-spouse as a beneficiary. JA at 39-40. The determination of the validity of a beneficiary, therefore, requires reference to the state laws that determine whether or not a participant employee is lawfully married or divorced.

Second, ERISA does not explain how to determine whether a designated beneficiary "survives".[5] A variety of state laws exist to determine who survives as a matter of law in a number of situations where it would affect inheritance, ownership of property, or rights to life insurance proceeds. *E.g.*, Wash. Rev. Code § 11.05.040, App. at 3a (Uniform Simultaneous Death Act provisions for paying proceeds of life insurance when there is simultaneous death of insured and beneficiary). In a situation involving questions of survival, the ERISA plan should look to state law in order to determine the beneficiary.

Third is the slayer statute. Slayer statutes prevent a murderer from inheriting his victim's property, often invoking the legal fiction that the murderer has, as a matter of law, failed to survive the victim. *E.g.*, Wash. Rev. Code § 11.84.030, App. at 5a; *see generally Emard v. Hughes Aircraft Co.*, 153

[5] The Plan in this case provided that if an employee failed to designate, "or if you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence: 1. To your *surviving* spouse. 2. If there is no surviving spouse, to your children in equal shares". JA at 40 (emphasis added).

F.3d 949, 960 n.11 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999) (discussing slayer statutes). The state policy behind slayer statutes is to protect a property owner by eliminating profit to a person who wrongfully causes his or her death. In 1993, 44 states and the District of Columbia has slayer statutes, four states had a common law bar. *See* Jeffrey G. Sherman, *Mercy Killing And The Right To Inherit*, 61 U. Cin. L. Rev. 803, 876 n.12 (1993). In states with slayer statutes there is the expectation that one spouse will not benefit from the murder of the other spouse. However, under petitioner's theory, ERISA requires the payment of pension and insurance benefits to a beneficiary wife who murdered her husband, overriding state law.

3. It is beyond the scope of this amicus brief to address fully why application of state law to determine validity of beneficiaries does not interfere with the provisions of ERISA. The amici states, however, observe that the state law in this case is not significantly different from a slayer statute or the Uniform Simultaneous Death Act. If there was a dispute regarding the validity of petitioner's marriage, if petitioner had been a slayer or if she had died in the car accident with the decedent, state law provides for a basis for determining whether she was a valid beneficiary to nonprobate property. Wash. Rev. Code § 11.07.010 occupies the same field as the slayer laws and death acts. It provides circumstances when ex-spouses do not, as a matter of law, survive as a beneficiary.[6]

[6] Indeed, the Washington statute in questions places no real burden on ERISA plans at all because, under Wash. Rev. Code § 11.07.010(2)(b)(i), the plans may include a plain statement that statutes which otherwise would operate to revoke or disclaim a beneficiary designation upon divorce do not apply and will not override a beneficiary designation.

III. THE SAVINGS CLAUSE FOR STATE REGULATION OF INSURANCE SHOWS THAT CONGRESS HAS NOT PRE-EMPTED APPLICATION OF STATE LAW TO INSURANCE POLICIES

In 29 U.S.C. § 1144(b) (ERISA § 514(b)), Congress preserved normal state powers to regulate insurance. As part of such regulation, states can impose the type of revocation requirement and non-survivorship rule of Wash. Rev. Code § 11.07.010.

> "In areas of the law not inherently requiring national uniformity . . . state statutes, otherwise valid, must be upheld unless there is found such actual conflict between the two schemes of regulation that both cannot stand in the same area, or evidence of a congressional design to preempt the field." *Head* v. *New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 430 (1963) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963)) (footnote omitted) (internal punctuation omitted).

There is no uniformity regarding the nature and regulation of the life insurance policies purchased by ERISA plans. Accordingly, even if state law is not applicable to the pension plan, the Court should consider separately the application of Wash. Rev. Code § 11.07.010 to the insurance proceeds. *See also* McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (saving insurance regulation for states). This broad preservation of state authority confirms that application of state law is not pre-empted in the context of the insurance policies. Analysis of pre-emption in this case should, if necessary, take into account Congress' preservation of state power in the field of insurance benefits.

CONCLUSION

For the foregoing reasons, the *amici* states respectfully request that the decision of the Washington State Supreme Court be affirmed.

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APPENDIX

26.09.080 Disposition of property and liabilities—Factors. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage; and

(4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time. [1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

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11.05.040 Distribution of insurance policy when insured and beneficiary die simultaneously. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [1965 c 145 § 11.05.040. Prior: 1943 c 113 § 4; Rem. Supp. 1943 § 1370-4. Formerly RCW 11.04.210.]

Reviser's note: The subject matter of this section and RCW 11.05.050 relating to insurance also appears in RCW 48.18.390.

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11.84.030 Slayer deemed to predecease decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]